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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,578	07/28/2001	Ruth F. Eden	HT-109US	9243

7590 07/30/2003

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EXAMINER

NGUYEN, BAO THUY L

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,578

Applicant(s)

EDEN, RUTH F.

Examiner

Bao-Thuy L. Nguyen

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are the rod 5 or non-wicking string 14 for moving the enclosure in the suspension and for the subsequent removal of the enclosure from a suspension.

It is recommended that applicant amend claim 1 by inserting in line 7, after "microorganism" the following: --means attached to an upper part of the enclosure for moving the enclosure in the suspension and for subsequent removal of the device from the suspension—.

Claim 5 should be amended by inserting in line 4, after "a grid" the following:

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-material--; and in line 7, after "beads;" the following: --wherein said enclosure further comprises means attached to an upper part of the enclosure for moving the enclosure in the suspension and for subsequent removal of the enclosure from the suspension --

Claim 13 lacks antecedent support in the specification. It is recommended that applicant amend the specification by inserting in page 5, line 8, after "the wash step" the following: -the beads are separated from the enclosure and subsequently --

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4,230,685 which discloses a method of magnetic separation of cells using micropheres.

US 4,677,055 which discloses an immunological method for the detection of bacterial pathogens with antibody-containing magnetic gel.

US 4,695,393 which discloses magnetic particles for use in separations of analytes.

US 5,081,035 which discloses a bioreactor system.

US 5,409,822 which discloses biparticle fluidized bed reactors.

US 5,491,068 which discloses method for detecting the presence of bacteria.

US 5,567,615 which discloses affinity separation methods.

US 5,695,946 which discloses assay method for detecting the presence of bacteria.

US 5,866,006 which discloses coated single particles and their use in fluid bed chromatography.

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US 6,395,537 B1 which discloses double container device and method for detecting and enumerating microorganism in a sample.

WO 95/21241 which discloses microbiological culture bottle, and method of making and using it.

Allowable Subject Matter

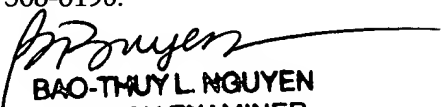
4. Claims 1-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the claims are free of the prior art of record because the prior art of record fail to teach a device for separating target microorganism from a suspension comprising a plurality of beads coated with at least one antibody to capture the target microorganisms and an enclosure made of a grid material enclosing said beads, with pore sizes smaller than the size of said beads and larger than the size of the microorganism.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao-Thuy L. Nguyen whose telephone number is (703) 308-4243. The examiner can normally be reached on Monday, Wednesday and Thursday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (703) 305-3399. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 and (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


BAO-THUY L. NGUYEN
PRIMARY EXAMINER
7/25/03